Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
A la carte and Themed Tier Programming and Pricing Options For Programming Distribution on Cable Television and Direct Broadcast Satellite Systems	))))	MB Docket No. 04-207

COMMENTS OF
THE MOTION PICTURE ASSOCIATION OF AMERICA

The Motion Picture Association of America ("MPAA") submits these comments in response to the Commission's *Public Notice* in the above-captioned proceeding. *See Public Notice,* DA 04-1454 (May 25, 2004); *see also Order,* DA 04-2025 (July 2, 2004) (extending comment deadline). As discussed below, the introduction of *a la carte* or themed tier cable television pricing options would disserve the public interest because it would constrain the availability of high-value entertainment programming, thereby adversely affecting program diversity and consumer choice.

The MPAA is a nonprofit trade association representing seven of the largest producers and distributors of television programs, feature films and home video entertainment material. The members of the MPAA include Sony Pictures Entertainment Inc., Metro-Goldwyn-Mayer Studios Inc., Paramount Pictures Corporation, Twentieth Century Fox Film Corporation, Universal City Studios, Inc., Warner Bros., and Buena Vista Pictures Entertainment, an affiliate of The Walt

Disney Company. MPAA member companies are responsible for conceiving, developing and producing some of the most original and entertaining high-value programming available today on satellite-delivered program networks distributed over cable television and Direct Broadcast Satellite systems (collectively, "cable networks").

High-value programming of this nature is expensive. During the 2002-2003 television season, MPAA member companies collectively spent in excess of a half billion dollars to produce cable programming; the aggregate figure over the past four years has exceeded $1.5 billion. The average cost to MPAA member companies of producing a single hour of series programming for cable was more than $1 million during this period. These expenditures have been in addition to the investment by MPAA member companies in the production of original, high-value programming for exhibition over broadcast television, which depends in part on revenue generated by repurposing or syndication over cable networks in order to recoup production costs. All told, during the 2002-2003 television season alone, MPAA member companies spent over *$3 billion* to produce cable and prime time broadcast network programming.

Meanwhile, production costs for all forms of high-quality entertainment programming have increased dramatically. For example, between 2001 and 2003, cable programming production costs for MPAA member companies rose nearly 20 percent. A recent study by the U.S. General Accounting Office ("GAO") confirms that production costs continue to rise significantly. *See* GAO, *Telecommunications: Subscriber Rates and Competition in the Cable Television Industry,* GAO-04-262T, March 25, 2004, ("GAO Report") at 10 (stating that competition to produce and exhibit programming that will attract viewers "has bid up the cost of key inputs . . . such as talented writers and producers").

There can be no question that the increase over the past decade in the number of cable networks available to consumers has enabled them to enjoy an ever-expanding variety of programming from multiple diverse sources. This increase in viewing options has expanded the overall market for video programming, as well as the number of cable networks capable of supporting the production of high-value programming. The proliferation of cable networks, in turn, has helped ensure the continued production of high-value programming, even as production costs have continued to increase, by creating a larger pool of competing purchasers.

Cable networks have been able to support the continued production of high-value programming because of the advantages conferred by their dual revenue streams – advertising sales revenues and subscriber fees, *see id.* at 15 – both of which depend on the number of subscribers the network reaches or has the potential to reach. Historically, the inclusion of cable networks in program packages or tiers has given cable networks an opportunity to expand their viewing audience, in part because tiers aggregate newer networks with well-established popular networks, thereby enabling them to be sampled by consumers. *See The Pitfalls of A La Carte: Fewer Choices, Less Diversity, Higher Prices,* NCTA White Paper, May 2004 at 1. Tiering of cable networks also creates a framework that supports niche cable networks and specialized services such as C-SPAN. Not surprisingly, "cable networks strive to be on cable operators' most widely distributed tiers because advertisers will pay more to place an advertisement on a network that will be viewed, or have the potential to be viewed, by the greatest number of people." GAO Report at 15. The tiering model therefore has enabled cable networks to maximize their advertising and subscriber-fee revenue streams, supporting, in turn, the development, purchase and exhibition of high-value entertainment programming – precisely the type of programming produced by MPAA member companies.

An *a la carte* purchasing and pricing scheme for cable networks would jeopardize the market for high-value programming by eroding the dual revenue stream available to cable networks. *See, e.g., id.* at 14 ("[i]f cable subscribers were allowed to choose networks on an *a la carte* basis, the economics of the cable network industry would be altered"). And, although an *a la carte* approach would reduce the subscriber base of all cable networks, it would affect smaller, less popular networks most severely.

There is no persuasive evidence that the majority of consumers would prefer to subscribe to cable networks on an *a la carte* basis. But the likely result of an *a la carte* regime would be that only a limited number of the most generic general entertainment networks would be selected by subscribers and the potential viewership of nearly all cable networks would decline. This, in turn, would directly affect the financial viability of cable networks by constraining their ability to attract advertising dollars and subscriber fees. It also would deter the development and launch of innovative programming, particularly by small and independent producers with limited financial resources who must rely on those networks for program distribution.

A decline in the financial viability of cable networks that previously benefited from being carried on an expanded basic level or tier of services would have a direct and adverse impact on program diversity because it would reduce the number of available outlets for high-value programming. This concern already has been expressed to Congress by a variety of programming executives representing both general interest and niche cable networks.

For instance, a group of women programming executives – some of whom are associated with popular program networks owned by MPAA member companies – recently informed Congress that the "*a la carte* distribution of cable networks would . . . substantially reduce audience reach and viewership, resulting in significant reductions in advertising revenue that would cause the demise of many existing cable program services and severely limit the creation of new ones." *See* Women Programming Executives Letter, May 5, 2004, at 1, attached hereto as Attachment A. Executives of cable networks that serve ethnic and minority audiences noted that an *a la carte* model "would instantly erode advertising support." *See* Minority Programmers Letter, May 12, 2004, at 1-2, attached hereto as Attachment B. The Congressional Black Caucus, citing the experiences of TV One, a new cable network targeting African American viewers, and ESPN Deportes, a Spanish language sports network, also recently told Congress that an *a la carte* pricing scheme would erode the advertising base for cable networks generally, and, in particular, niche networks. *See* Congressional Black Caucus Letter, May 12, 2004, attached hereto as Attachment C.

Revenue declines resulting from *a la carte* pricing would inevitably lead to a reduction in the total number of cable networks, thereby reducing the number of potential purchasers of creative, original and entertaining high-value programming. The availability of fewer outlets would, in turn, create substantial disincentives to the production of such programming by MPAA member companies and other producers.

The real losers, of course, would be American consumers, who would no longer have access to the diverse array of high-value programming they enjoy today. Rather than receive a broad selection of channels – each capable of generating potentially significant advertising revenues and subscriber fees to support the acquisition and development of high-quality programming – consumers would be left to choose from among a few general interest networks offering only limited program choices of diminished quality.

In view of the direct and deleterious effect of an *a la carte* model on program availability and quality, it is more than a little ironic that proponents of *a la carte* pricing options have produced no clear evidence that *a la carte* would reduce subscribers' monthly bills. To the contrary, in an *a la carte* world, cable networks – and thus cable operators – would have to charge higher fees in order to recover lost advertising and subscriber revenues resulting from lower viewership. *See* GAO Report at 16 ("subscribers' monthly cable bills would not necessarily decline under an *a la carte* system").

Conclusion

The *a la carte* concept is a solution in search of a problem. The adoption of *a la carte* programming and pricing schemes – even if optional – would disrupt the economics of the video programming marketplace. In the process, it would erode the supply of diverse high-value programming that today is enjoyed by millions of viewers. Ultimately, it would diminish the number and quality of viewing options available to American consumers for the sake of a perceived benefit that is speculative, at best.

Respectfully submitted,

MOTION PICTURE ASSOCIATION OF AMERICA

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Its Attorneys

Dated: July 15, 2004

May 5, 2004

An Open Letter to Congress
From Concerned Women Programming Executives
Opposing *A La Carte* Pricing of Consumers' Television Channel Choices

Dear Members of Congress:

We urge you to oppose legislative proposals to require cable and satellite providers to offer programming on an *a la carte* basis or dictate the terms of private contracts between program networks and multichannel video distributors, including terms regarding the packaging and marketing of programming. As women television executives, who have strived to create quality programming, we take pride in the fact that our networks have vastly expanded programming choice and diversity for American consumers. Government efforts to dictate how our programming is packaged or marketed would be bad for consumers because it would give them less choice and less diversity in programming, and it would increase the price they would pay for this inferior set of offerings.

To be clear, consumers would actually have *fewer* programming choices and yet, because the license fees of cable program services would dramatically rise in order to cover the ad revenue shortfalls, as the General Accounting Office found in its October 2003 report, prices for cable subscribers could actually *increase* under an *a la carte* model. Under an *a la carte* system, consumers who now pay $40 per month for expanded basic cable service that provides 60 to 70 channels, may need to pay the same $40 for a fraction of the channels they currently receive.

In addition to harming consumers, these proposals would hurt our businesses, which our viewers value and believe have enriched the television landscape. Cable program services like ours generally depend on a dual revenue stream of advertising and license fees paid by cable operators and satellite carriers. A substantial portion of our networks' revenues comes from advertising, which is directly tied to audience reach. This economic model has been tremendously successful in improving the quality and quantity of television programming choices for the American consumer. *A la carte* distribution of cable networks would undermine the dual revenue stream model. Notably, it would substantially reduce audience reach and viewership, resulting in significant reductions in advertising revenue that would cause the demise of many existing cable program services and severely limit the creation of new ones. The GAO's report confirmed that some cable networks would not survive in an *a la carte* environment.

Over the past twenty-five years, an impressive and vibrant cable programming industry has developed, providing Americans with the most diverse array of television programming anywhere in the world. By contrast, *a la carte* – whether in place of, or as an add-on to, the current tiering model – would dramatically change the way programming is distributed and marketed and undermine the economic underpinnings of our businesses.

The cable industry is very mindful of concerns that have been raised about programming that may not be suitable for general family viewing. However, a fundamental restructuring of the programming business through *a la carte* pricing is not the solution. The cable industry is already addressing these concerns by providing its customers with tools to control the programming that comes into their homes. Specifically, cable operators are making available to customers, free of charge, technology that allows them to block any channels they wish. And cable networks have reaffirmed their commitment to labeling programs using the TV ratings system. Additionally, the cable industry has launched a comprehensive consumer education campaign to ensure parents know these tools are available and how to use them.

We urge you to oppose any efforts to require that program networks be sold or offered on an *a la carte* basis. American television viewers have shown they appreciate the incredible array of programming choices available to them today – they do not want to lose their favorite channels.

Sincerely,

Carole Black
President & Chief Executive Officer
Lifetime Entertainment Services

Kathy Dore
President of Entertainment Services
Rainbow Media Holdings, Inc.

Judy Girard
President
Shop At Home

Andrea Greenberg
President, Distribution & Rainbow Sports Network

Bonnie Hammer
President
Sci Fi Channel

Mindy Herman
President & Chief Executive Officer
E! Entertainment Networks

Brooke Johnson
President
Food Network

Geraldine Laybourne
Chairman & Chief Executive Officer
Oxygen Media, Inc.

Debra Lee
President & COO
BET Holdings, Inc

Judith McGrath
President
MTV Networks Group

Judith McHale
President & Chief Operating Officer
Discovery Communications, Inc.

Christina Norman
President
VH1

Laureen Ong
President
National Geographic Channel

Susan Packard
President
Scripps Networks Affiliate Sales and International Development

Abbe Raven
Executive Vice President & General Manager
A&E Network

Cynthia Sheets
President & Chief Executive Officer
Wisdom Media Group

Anne Sweeney
Co-Chairman, Disney Media Networks
President, Disney-ABC Television

Pamela Thomas-Graham
President & Chief Executive Officer
CNBC

Lauren Zalaznick
President, TRIO
Executive Vice President Network Enterprises,
Universal Television

Cyrna Zarghami
President
Nickelodeon Television

May 12, 2004

The Honorable Joe Barton
Chairman
Energy and Commerce Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Dingell
Ranking Member
Energy and Commerce Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman and Mr. Dingell:

We understand that some Members of Congress have suggested requiring cable and satellite companies to sell basic cable networks on a channel-by-channel, or "a la carte," basis. On the surface, this idea sounds appealing, but a deeper look can only lead to the conclusion that a la carte packaging and pricing of programming would have a chilling effect on programming diversity in America.

Ethnic and minority populations in the U.S. are acutely underserved by television's current offerings, and many opinion leaders have called on media businesses to generate more channels to serve audiences of African-Americans, Hispanics, Asians, and other ethnic groups. While some progress is being made in this area, the imposition of an a la carte pricing model could bring those efforts to a screeching halt. Networks like ours, that serve diverse, minority and multilingual interests, would never have been launched in an a la carte world.

To reach the audience to which this programming is directed, cable channels need to be part of widely distributed cable or satellite tiers. Securing this kind of carriage — with the potential advertising base it provides — allows a network to sell national advertising. This ad revenue, along with the reasonable fees our channels must charge cable companies for carriage, allows us to provide high-quality programming.

If cable and satellite companies sell channels a la carte, it would instantly erode potential advertising support, forcing us to dramatically increase the per-subscriber fee we must charge. Ultimately, subscribers would find themselves paying about the same amount — and possibly more — for just a handful of channels, rather than having hundreds from which to choose, as they do today.

We are not the only ones who have recognized this outcome. In its comprehensive report on cable pricing released last fall, the General Accounting Office concluded: "If cable subscribers were allowed to choose networks on an a la carte basis, the economics of the cable industry could be altered, and if this were to occur, it is possible that cable rates could actually increase for some customers."

One of the great promises of cable is that with its multi-channel universe, subscribers can not only have programming designed for them, but also have the ability to share other cultures, communities, styles and viewpoints. The imposition of a la carte would drastically reduce, if not eliminate entirely, that opportunity.

A la carte is a classic case of a solution far worse than the perceived problem. Those who promote more diversity in today's media marketplace would do it a fatal disservice by supporting or voting for a la carte requirements.

Sincerely,

Debra Lee
President & Chief Operating Officer
BET Holdings, Inc.

Jeff Valdez
Chief Executive Officer
Sí TV

Johnathan Rodgers
Chief Executive Officer
TV One

Kent Rice
President & Chief Executive Officer
International Channel

cc: Members of the House Energy and Commerce Committee

ATTACHMENT C

Congress of the United States
Washington, DC 20515

May 12, 2004

The Honorable Joe Barton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable John D. Dingell
Ranking Member
Committee on Energy and Commerce
2322 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Barton and Ranking Member Dingell:

As members of the Congressional Black Caucus we are extremely concerned about Congressman Nathan Deal's proposal for "a la carte" distribution of program services on direct broadcast satellite services. The adoption of this amendment to the reauthorization of the Satellite Home Viewer Improvement Act (SHVIA) is likely to have the effect of reducing diversity of programming on satellite services while at the same time increasing costs to the consumer.

In January of this year both TV One, a new cable network for African Americans and ESPN Deportes, a Spanish language sports network, were launched with great fanfare. We believe in an "a la carte " world it would have been extremely difficult if not impossible for these channels to have been developed. Furthermore, if an "a la carte" system were to become reality today these channels and many others that offer diversity to the viewing public would be in great jeopardy.

The reason is one of simple economics. These channels cannot survive with only the subscription fees they charge to cable companies. Revenue from a national advertising base is essential. If the "Deal Amendment" were to prevail the potential advertising base for niche channels would be severely eroded. In turn, this would lead to less advertising dollars for the programmer, an increase in licensing fees and ultimately an increase in consumer costs. In the end this would translate into fewer choices for consumers and less diversification of programming.

As Alfred Liggins from TV One stated in a recent Washington Times Op Ed "One of the great promises of cable is that with its multi-channel universe we subscribers would not only have programming designed for us, but we also would have the ability to share other cultures, communities, styles and viewpoints". We agree with Mr. Liggins vision, however, its unlikely this can be accomplished if Congressman Deal's amendment becomes law.

Again, we urge you to seriously consider this matter as you undertake the reauthorization of the Satellite Home Viewer Improvement Act (SHVIA). Please feel free to contact us if you should have any questions or comments.

Sincerely,

Diane E. Watson

Eddie Bernice Johnson

Donald M. Payne

Barbara Lee

The Honorable Joe Barton
The Honorable John D. Dingell
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Harold Ford

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Chaka Fattah

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David Scott

Kendrick B. Meek

cc: Members of the House Energy and Commerce Committee